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Phillips, Erlewine, Given & Carlin LLP

June 21, 2018

**By ECF**

Hon. Vince Chhabria  
United States District Judge  
450 Golden Gate Ave.  
Courtroom 4, 17<sup>th</sup> Floor  
San Francisco, CA 94102

**Re: In re: Facebook, Inc. Consumer Privacy User Profile Litigation**  
*MDL No. 2843; Case No. 18-md-02843-VC*

Dear Judge Chhabria:

Pursuant to the Court's Pretrial Order No. 1, I submit this letter in support of my application for appointment as Lead Plaintiffs' Counsel, or other leadership position should the Court choose to designate additional leadership positions. I do suggest that the Court consider appointing additional leadership counsel given the potential size of this case (over 80 million potential class members), its nationwide (and indeed international) nature, and its significance with respect to the integrity of our elections and our democracy. Attached hereto as Attachment A is my resume.

**I. Professional Experience**

I have been a member in good standing of the State Bar of California since 1984. My law practice emphasizes complex consumer class actions before both state and federal courts. During my 34-year law career, I have successfully litigated hundreds of cases for thousands of clients, including trying numerous civil cases and arbitrations to verdict. I have been a litigator and trial lawyer for my entire legal career.

My undergraduate degree was in Physics. Before going to law school, I spent several years working as a computer programmer and in electronics. I have also been an entrepreneur, having founded a technology start-up in Silicon Valley with funding from a number of venture capital investors. I am thus well-versed in technical and computer-programming issues, hard and soft intellectual property, and the dynamics of technology companies.

**A. Multidistrict and Consolidated Class Action Litigation Experience**

I have previously served as Lead or Co-Lead Counsel in complex class actions, including MDLs and California Judicial Council Coordination Proceedings (JCCPs).

For example, I served as Class Counsel and Co-Team Leader for the Bank of America case in the multidistrict litigation challenging several large banks' debit card overdraft fee practices, resulting in a \$410 million settlement. (*In Re: Checking Account Overdraft Litigation*, MDL Case No. 02036). As a result of my work on that matter, I was named a finalist by the Consumer Attorneys of California for "Consumer Attorney of the Year." My

firm and I were also Class Counsel through that MDL in the cases against M&T Bank (*Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank*, S.D. Fla. Case No. 1-10-CV-20478-JLK, D.Md. Case No. 1:09-cv-02207-WDQ - \$4 million settlement) and Bank of the West (*Dee et al. v. Bank of the West*, S.D. Fla. Case No. 1:10-cv-22985-JLK; N.D. Cal. Case No. 4:10-cv-02736 - \$18 million settlement).

My firm and I also served as Co-Lead Counsel in two class actions against major recording companies alleged to have improperly accounted for income derived from recording artists' digital download sales. Those cases resulted in \$23 million in combined settlements (see *Rick James, et al. v. UMG Recordings, Inc.*, N.D. Cal. Case No. 11-cv-01613-SI & *Sledge, et al. v. Warner Music Group Corp.*, N.D. Cal. Case No. 12-cv-0559-RS).

In addition, I served as Co-Lead Counsel in the consolidated consumer class action litigation against The Honest Company. In that matter, the Honest Company was alleged to have falsely labeled its products as "all-natural" or "100% natural" when those products contained synthetic, non-organic ingredients. The monetary settlement in that case totaled \$7.35 million; the defendant also agreed not to label certain products as "natural" (see *In Re: Honest Marketing Litigation*, S.D.N.Y. Case No. 16-cv-01125-VM).

In the privacy area, my firm and I were Co-Lead Counsel in the complex and hard-fought litigation against Apple, Inc. and a dozen app developers alleged to have violated iPhone users' privacy by surreptitiously accessing and downloading their personal contacts. That litigation resulted in a \$5.3 million settlement (see *Opperman v. Kong Technologies*, N.D. Cal. Case No. 13-cv-00453-JST).

A sample of other class and complex litigation I have handled includes:

- *In re DCH Wage & Hour Litigation*, Los Angeles Superior Court Case No. BC 565052 & California Judicial Council Coordination Proceedings (JCCP) No. 4833. Class and PAGA representative actions for wage theft. Co-Lead Counsel. (\$10.5 million combined settlements.)
- *Combrisson v. City and County of San Francisco*, San Francisco Court Case No. CGC-09-489400. Consumer class action regarding balance billing at county hospital. Lead Counsel. (Class received a 100 cents on the dollar recovery.)
- *Sayre v. SFS 39, Inc.*, San Francisco Superior Court Case No. CGC-12-523838. Wage and hour class action on behalf of restaurant workers. Lead Counsel. (\$1.9 million settlement.)
- *Smith v. Digirad Imaging Solutions, Inc.*, Alameda Superior Court Case No. RG 16816494. Wage and hour class action on behalf of cardiac stress technicians. Lead Counsel. (\$1.3 million settlement.)

## **B. Subject Matter Experience**

This matter involves widespread privacy violations. As my firm's work in the *Opperman* data privacy litigation demonstrated, I am prepared to effectively represent a large class of consumers against well-resourced technology companies like Apple in that case and like Facebook here. In *Opperman*, I worked closely with our coding experts, which we will undoubtedly have to do in this case as well. My personal experience as a computer programmer helps me to communicate effectively with such experts and to understand the technology side of this type of case. Additionally, as counsel for internet marketing and lead generation companies for many years, I have dealt with a whole host of

internet privacy issues, including consent, scope of authorizations, viral marketing, and regulatory issues, many of which may be relevant here.

## **II. Familiarity with Claims**

Most of the cases in this MDL allege various forms of invasion of privacy, intrusion upon seclusion, violations of the Stored Communications Act, unfair competition, negligence, conversion, breach of contract, fraud, and so on. I am familiar with all of these types of claims and I am prepared to prosecute them here.

## **III. Present and Future Ability to Commit**

My firm and I are committed to prosecuting these claims on behalf of those affected and we possess the ability to maintain that commitment through final resolution.

## **IV. Ability to Work Cooperatively**

My track record serving in leadership positions in numerous high-profile class and other actions demonstrates my ability to work cooperatively with all other counsel involved. As one of the San Francisco Bay Area's longtime plaintiffs' litigation boutiques, we are often involved in large class actions requiring the efforts of multiple similarly sized and situated firms. As a result, we have a proven track record of working cooperatively with our peer firms (such as Lieff Cabraser Heimann & Bernstein and Kerr & Wagstaffe) to provide representation of the highest quality. In fact, several of the firms in this MDL support my leadership application: Lieff Cabraser Heimann & Bernstein; Keller Rohrbach Law Offices; and Cuneo, Gilbert & LaDuca LLP (see Exhibit 1 to Attachment A).

## **V. Available Resources**

My firm possesses and is capable of committing the resources needed for this litigation during the entirety of its duration. We have six highly capable full-time attorneys and five full-time paralegal and support staff members, and I will ensure our resources are appropriately deployed throughout. Mine is a well-established practice with the financial wherewithal to support the litigation comfortably and without stress or delay. Moreover, having served in leadership positions in various other similar resource-intensive class actions, I am highly knowledgeable about the resources necessary to adequately and successfully litigate this type of case.

## **VI. Ability to Maintain Reasonable Fees & Costs**

I believe in providing the highest quality legal services to all of my clients at an affordable cost. I will ensure that this case is litigated in an efficient manner, avoiding duplication of effort, and keeping in mind at all times the best interests of the class. I have never had a court question or reduce my fees in any class action (or any other type of case with an attorneys' fees right), which I believe is a testament to my management abilities in this area.

In conclusion, I respectfully request the Court consider me for lead counsel, or for such other leadership positions that the Court sees fit to appoint.

Respectfully submitted,

/s/ Nicholas A. Carlin  
Nicholas A. Carlin

# ATTACHMENT A



## **NICHOLAS A. CARLIN**

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(415) 398-0900 | [nac@phillaw.com](mailto:nac@phillaw.com)

### **Education**

- Harvard College – B.S., Physics (1978)
- Hastings College of the Law – J.D. (1983)

### **Employment**

- 2008 – Present: Partner, Phillips, Erlewine, Given & Carlin LLP: Civil practice emphasizing complex litigation, class actions, employment, technology, intellectual property, entertainment, and catastrophic injury.
- 2006 – 2007: Of Counsel, Phillips, Erlewine & Given LLP: Civil practice emphasizing complex litigation, employment, technology, intellectual property, entertainment, and catastrophic injury.
- 1999 – 2005: Principal, Law Offices of Nicholas A. Carlin: Civil practice emphasizing complex litigation, technology, intellectual property, entertainment, personal injury, and business law and general litigation.
- 1999 – 2001: Co-Founder/CEO/President, Kromos Technology, Inc.: Advanced mathematical solutions for signal processing and communications. Kromos was acquired in 2000 by Comstellar Technologies, Inc.
- 1992 – 1998: Partner, Haus & Carlin: General litigation practice.
- 1988 – 1992: Principal, Law Offices of Nicholas A. Carlin: General litigation practice.
- 1984 – 1988: Associate attorney, Herzstein, Garofalo & Fortune: Civil litigation practice including commercial, real property, secured transactions, lender liability and partnership disputes.

### **Bar Admissions**

- U.S. Court of Appeals, 9th Circuit (2015)
- U.S. Court of Appeals, 11th Circuit (2012)
- U.S. District Court, Eastern District of California (2009)
- U.S. District Court, Central District of California (1990)
- U.S. District Court, Northern District of California (1985)
- State Bar of California (1984)

## **Affiliations**

- Consumer Attorneys of California (finalist for Consumer Attorney of the Year, 2012)
- California Employment Lawyers Association (CELA)
- State Bar of California (Business Law; Intellectual Property; Litigation)
- Bar Association of San Francisco (Entertainment & Sports Law, Founding Member)
- San Francisco Trial Lawyers Association
- ABA “Entertainment and Sports Lawyer” (Visual Arts Editor, 1998-2001)

## **Guest Lecturer**

- University of San Francisco
- U.C. Berkeley School of Law
- Hastings College of the Law

## **Civic and Charitable Organizations and Activities**

- 2008 – 2014: Delegate to California State Democratic Party, Member of Platform Committee, Creator and Chair of the Civil Justice Plank, Chair of the National Security Plank
- 2006 – 2010: Vice Chair, San Francisco Public Utilities Commission, Citizens Advisory Committee
- 2006 – 2010: Vice President and Member of Board of Directors of Symphony Parnassus

## **Other Skills/Interests**

- Co-Author of U.S. Patent No. 6,313, 778: “Method and a system of acquiring local signal behavior parameters for representing and processing a signal”
- United States National Chess Master
- Cellist: (Berkeley Symphony, Symphony Parnassus, Mill Valley Philharmonic, Verismo Opera, among others)

## **Selected Published Decisions**

- *Opperman v. Path, Inc.*, 87 F.Supp.3d 1018 (N.D. Cal. 2015)
- *Stephanie Ford Stewart v. Screen Gems-EMI Music, Inc.*, 81 F.Supp.3d 938 (N.D. Cal. 2015)
- *In re Checking Account Overdraft Lit.*, MDL No. 2036, 674 F.3d 1252 (11th Cir. 2012)
- *USA Technologies, Inc. v. Doe*, 713 F.Supp.2d 901 (N.D. Cal. 2010)

# **EXHIBIT 1**

Firms Supporting Nicholas A. Carlin's Appointment as Lead Counsel

**In re: Facebook, Inc. Consumer Privacy User Profile Litigation**  
*MDL No. 2843; Case No. 18-md-02843-VC*

- I. Michael W. Sobol  
Lieff Cabraser Heimann & Bernstein, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
Phone: 415-956-1000
- II. Cari Campen Laufenberg  
Keller Rohrback, LLP  
1201 Third Ave., Suite 3200  
Seattle, WA 98101  
Phone: 206-623-1900
- III. Michael J. Flannery  
Cuneo Gilbert & LaDuca, LLP  
4725 Wisconsin Ave. NW, Suite 200  
Washington, D.C. 20016  
Phone: 202-789-3960